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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT TACOMA

9 JEROME TALLEY,

10                   Plaintiff,

No. C15-5593 RBL-KLS

11 v.

12 TINA R. ROBINSON,

Defendant.

13                   **REPORT AND RECOMMENDATION**  
14                   **Noted For: October 16, 2015**

15 Plaintiff Jerome Talley, a pretrial detainee being held at Kitsap County Jail, filed an  
16 application to proceed *in forma pauperis* (IFP) in this civil rights action on September 4, 2015.  
17 Dkt. 4. Plaintiff has over ten §1983 cases currently pending before this Court. On September  
18 24, 2015, Senior District Judge Lonny R. Suko entered an order denying Plaintiff's application to  
19 proceed IFP in *Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash) because Plaintiff incurred  
20 at least three "strikes" prior to initiating the lawsuit. Judge Suko also denied the applications to  
21 proceed IFP in *Talley v. Congalton, et al.*, 3:15-cv-5534-LRS (W.D. Wash) and *Talley v.*  
22 *Creatura*, 3:15-cv-5585-LRS (W.D. Wash) because Plaintiff has incurred at least three "strikes."

23                   Concurring with Judge Suoko, this Court finds Plaintiff incurred the following "strikes"  
24 prior to filing this lawsuit: *Talley v. Holevinski* (E.D. Wash Case No. 02:99-cv-5036); *Talley v.*  
25 *Bailey, et al.* (W.D. Wash Case No. 2:08-cv-00677-TSZ); *Talley v. Bailey, et al. (II)* (W.D. Wash

1 Case No. 2:08-cv-00752-RSM); and *Talley v. Rogers* (W.D. Wash Case No. 2:08-cv-01761-  
 2 TSZ). *See also Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash)<sup>1</sup>.

3 **DISCUSSION**

4 Because Plaintiff has incurred at least three strikes, he may not proceed IFP unless he can  
 5 show he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The  
 6 imminent danger exception requires a prisoner allege a danger which is “ready to take place” or  
 7 “hanging threateningly over one’s head.” *Andrews v. Cervantes*, 493 F.3d 1047, 1056 (9th Cir.  
 8 2007). In this case, Plaintiff sues the Kitsap County Prosecuting Attorney, alleging that  
 9 Washington Superior Court Judge, a deputy prosecuting attorney, and his own attorney, alleging  
 10 that he is being “taken, imprisoned, outlawed, destroyed, and condemned without an indictment  
 11 by a grand jury of good and lawful men...”. Dkt. 1.

12 Plaintiff does not allege danger of any physical injury, much less an imminent serious  
 13 physical danger which is “ready to take place” or “hanging threateningly over [his] head.”  
 14 *Cervantes*, 493 F.3d at 1056. Therefore, the imminent danger exception does not apply in this  
 15 case, and Plaintiff is subject to the three-strikes rule.

16 **CONCLUSION**

17 The Court recommends Plaintiff’s Motion to Proceed IFP (Dkt. 1) be denied as Plaintiff  
 18 has incurred at least three strikes under 42 U.S.C. § 1915(g). The Court further recommends  
 19 Plaintiff be ordered to pay the \$400.00 filing fee within thirty days of the District Court’s order  
 20 and, if the fee is not paid, dismiss this case without prejudice.

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 26<sup>1</sup> This court may take notice of judicial proceedings in another court. *See U.S. ex rel. Robinson Rancheria*  
*Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

1 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
2 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
3 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
4 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time  
5 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **October**  
6 **16, 2015**, as noted in the caption.  
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8 DATED this 1<sup>st</sup> day of October, 2015.

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11 Karen L. Strombom  
12 United States Magistrate Judge  
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